

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

|                              |   |                  |
|------------------------------|---|------------------|
| MELVIN KERCHEE, JR., et al., | ) |                  |
|                              | ) |                  |
| Plaintiffs,                  | ) |                  |
|                              | ) |                  |
| vs.                          | ) | No. CIV-11-459-C |
|                              | ) |                  |
| JUDGE MARK SMITH, et al.,    | ) |                  |
|                              | ) |                  |
| Defendants.                  | ) |                  |

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiffs brought the present action asserting 61 causes of action against over 40 Defendants, seeking recompense for alleged violations of their constitutional rights, assorted statutes, and common law. Consistent with the provisions of 28 U.S.C. § 636(b)(1)(B), this action was referred to United States Magistrate Judge Robert E. Bacharach. Judge Bacharach entered a Report and Recommendation (“R&R”) on July 6, 2011, to which Plaintiffs timely objected.

The substantive facts and law are accurately set out in Judge Bacharach’s R&R and there is no purpose to be served in repeating them yet again. As Judge Bacharach noted, Plaintiffs’ claims can be separated into Parts I and II. Because the claims are misjoined, those set forth in Part II will be dismissed. As for the claims set forth in Part I, Judge Bacharach set forth a thorough and well-reasoned analysis of those claims, the applicable law, and the reason why those claims fail. Plaintiffs’ Objection offers no reasons to alter Judge Bacharach’s conclusion, nor any argument which is not fully addressed by the R&R. Therefore, further explanation is not warranted.

For the reasons announced in the R&R, the Court: DISMISSES with prejudice Causes of Action 34 to 61 as they are improperly joined. All of Plaintiff Deborah Sequichie-Kerchee's remaining claims are DISMISSED without prejudice for lack of standing. Plaintiff Melvin Kerchee's claims brought pursuant to the Religious Freedom Restoration Act, the Sherman Act, the Clayton Act, the Fifth Amendment, the Freedom of Information Act, the Open Records Act, the Securities Exchange Act of 1934, the Ashurst-Sumners Act, the Federal Powers Act, 42 U.S.C. § 1997, and 42 U.S.C. § 2000e-11 are DISMISSED without prejudice as they either relate only to claims brought in the misjoined counts or do not provide a claim for relief as pleaded by Mr. Kerchee. Mr. Kerchee's 42 U.S.C. § 1983 and Bivens\* claims raised in Causes of Action 1-8 and 13-25 are DISMISSED as time barred. Mr. Kerchee's claims against Judge Lewis sitting as a trial judge are DISMISSED as time barred. Mr. Kerchee's claims against Judge Lewis sitting as an appellate judge are barred by absolute judicial immunity and are therefore DISMISSED. Mr. Kerchee's claims against Senator LerBlance are barred by the Eleventh Amendment and absolute legislative immunity and are therefore DISMISSED. This Order does not address the claims brought by Mr. Kerchee against the Oklahoma Bar Association, the OBA director, unnamed OBA personnel, Lorraine Farabow, Scott Adams, Emmit Tayloe, and Michael Gassaway.

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\* Bivens v. Six Unknown Named Agents of Federal Bureau Narcotics, 403 U.S. 388 (1971)

As set forth more fully herein, the Court adopts, in full, the Report and Recommendation of the Magistrate Judge (Dkt. No. 25)

IT IS SO ORDERED this 27th day of September, 2011.



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ROBIN J. CAUTHRON  
United States District Judge